

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In Re Application of:

Thomas D. Petite

Serial No.: 08/825,576

Filed: March 31, 1997

For: **Transmitter for Accessing Automated
Financial Transaction Machines**



Examiner: F.L. Evans

Art Unit: 2877

Docket: 81607-1010

Appeal No. _____

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231, on November 22, 1999.

Signature - Daniel R. McClure

Enter
F.L. Evans

REPLY TO EXAMINER'S ANSWER

Honorable Commissioner of
Patents and Trademarks
Washington, D.C. 20231

Sir:

The Examiner's Answer mailed September 21, 1999 (Paper No. 20) has been carefully considered. This Reply is respectfully submitted in response thereto.

Response to Examiner's Argument

In response to the Examiner's arguments contained in the Examiner's Answer, Applicant respectfully reasserts the contentions made in its Appeal Brief. The following additional comments are provided for purposes of rebuttal.

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The Examiner asserts (at page 5 of Examiner's Answer) that "there is no original disclosure of a remote access device with a single user-depressable button for accessing a financial transaction machine which allows the controller of the access device to transmit a function code that defines a function selected from the group consisting of: a test code, an automobile lock and a distress call." Applicant respectfully asserts that the allowability of a claim possessing the aforementioned limitations is not at issue in the present appeal. In this regard, Applicant respectfully asserts that claim 23 is directed to a device, "as defined by claim 22, wherein the function code defines a function selected from the group consisting of automatic financial transaction machine access, a test code, an automobile lock, and a distress call." The aforementioned claim is set forth in conventional Markush-type claim format, and should be interpreted in accordance with established convention. Therefore, Applicant respectfully asserts that the Examiner's argument is misdirected.

Additionally, Applicant respectfully asserts that the use of a remote access device with a single user-depressable button for accessing a financial transaction machine which allows the controller of the access device to transmit a function code that defines a function selected from the group consisting of: a test code, an automobile lock and a distress call, could be constructed by one of ordinary skill in the art based on Applicant's original disclosure. Therefore, if such a claim were at issue, Applicant respectfully asserts that this hypothetical claim also would be in condition for allowance.

In regard to the Examiner's discussion of the *Wollenberg* reference (page 6 of Examiner's Answer), Applicant respectfully asserts that the Examiner has not set forth a cogent argument as to why the *Wollenberg* reference constitutes prior art. In this regard, Applicant respectfully reasserts that the *Wollenberg* reference has a publication of February 19, 1997, which does not


pre-date the constructive filing date of February 14, 1997, of the instant application. As a result, the *Wollenberg* reference may not properly be used to reject any claim of the instant application in the manner set forth by the Examiner. Additionally, in regard to the Examiner's contention that the key ring attached speed pass this prior art, Applicant respectfully submits that a key ring attached SpeedpassTM, having a "publication date" prior to February 14, 1997, has not been submitted to the Applicant during the course of examination. Therefore, the Speedpass, mentioned in the *Wollenberg* reference as being existence since August, 1996 may not be applied as a prior art reference as any evidence of the existence of such a device is inadmissible. Therefore, based on the established record in the instant case, the rejection pending against claim 25 is improper and should be removed.

CONCLUSION

Based upon the foregoing discussion, Appellant respectfully requests that the Examiner's final rejection of claims 21-25 be overruled and withdrawn by the Board, and that the application be allowed to issue as a patent with all pending claims 21-25.

No additional fees are believed to be due in connection with this Substitute Appeal Brief. If, however, any additional fees are deemed to be payable, you are hereby authorized to charge any such fees to deposit account No. 20-0778.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel R. McClure", written in a cursive style.

Daniel R. McClure
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